

## **R E M A R K S**

The office action of November 15, 2008 has been reviewed and its contents carefully noted. Reconsideration of this case, as amended, is respectfully requested. Claims 1, 7-12 and 15-18 remain in this case, claims 2, 3 and 13 having been canceled by this amendment.

Applicants wish to express their sincere appreciation for the personal interview granted by the Examiner on January 22, 2009 and for the time she devoted to discussing this application. It is believed that the discussion was very fruitful in helping to identify patentable subject matter.

### **Rejection(s) under 35 U.S.C. §103**

Claims 1, 4 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sapphire in view of Meehan et al. Applicant respectfully disagrees, and believes the claims, as amended, are patentable over the cited references, individually and in combination.

While Applicants have responded to this rejection before, additional comments will be provided in view of the discussion with the Examiner during the interview. Sapphire describes and advocates many systems for the reduction of waste due to the number of shipping platforms that end up in landfills, etc. They cite a number of examples of how shipping platforms can be returned to their original shipper. For example, they discuss “closed loop” systems in which the container always goes back to the same location (page 7, paragraph bridging over to page 8). The shipping platforms are part of a leasing system. Further in this paragraph, they describe a system that Xerox uses in which the containers need not return to their point of origin, defining this as an “open loop” system. However, this system is “open” only to the extent that Xerox themselves do not accumulate the used containers. They use “third party logistical service contractors” who **track** these reusable shipping containers. These logistical contractors to track, locate and without specific direction but per pre-established Xerox mandated procedures, arrange for the return of an accumulated number of pallets to Xerox. The parties involved in this system are all interconnected and do not use the services or the system of a separate coordinator, such as the coordinator identified in the claims.

In addition, Sapphire describes a system used by the auto manufacturer Toyota. This is essentially a closed loop system in which each *supplier* is required to “purchase and maintain [the] containers”. Since multiple suppliers provide the same or similar parts, Toyota designed their shipping containers and platforms to not only carry a limited number of specific types of parts, but that these containers, *because they are standardized*, can be returned to any of the suppliers producing any of the plurality of parts that the platform was designed to carry. It is again respectfully submitted that this type of shipping system teaches away from Applicants’ claimed system.

Sapphire further explains the difficulties experienced by smaller, independent, shippers. That is, those that are not part of a “closed loop-members only” organization. On page 17, they discuss these problems under the headings, **“Ensuring the return of containers is difficult”**; **“Tracking containers may be difficult”** and **“Adequate storage facilities may not be available”**. They therefore acknowledge the problems addressed by Applicants but they do not disclose or suggest a solution even substantially similar to Applicants’ system. Sapphire does mention systems that attempt to solve this problem by a variety of different means, such as that employed by H. E. Butts Grocery Company. In this system, Butts uses a number of distribution centers where the empty containers can be returned. Again, this is a closed loop system, in that the shipping containers are either at the original shipper, on H. E. Butts trucks or at H. E. Butts owned distribution centers.

Within Applicants’ system, once the shipping platforms leave the original shipper, they may never be seen by the original shipper again (please note the amendment to claim 1 in the wherein clause, support for which may be found on page 6, paragraph number 5). What Applicants’ system does, though, is provide a means whereby such an event may occur. The return of the original shippers shipping platforms is never a certainty. The stencil provided by the coordinator to the original shipper does not identify the original shipper, such as by stating “property of” or “owned by”, as in closed loop or members only systems. The end recipient does not know who is the “independent original shipper”. The stencils which are applied by the original shipper provide an address for the coordinator’s website so that the end recipient might access that website to start the process to see if the original shipper wants to “repurchase” the pallets in the possession of the end recipient (kindly note the amendment to claims 1 and the

addition of the word “repurchase” [support for which is to be found on p. 6, lines 5 and 29 of the specification, where the words “buy back” and “for sale” are used, thus implying that ownership of the pallets is no longer in the name of the original shipper once the products are shipped; please also note step 5 of Fig. 1]).

The coordinator then acts as the “middleman”, between the end recipient and the original independent shipper. This coordination effort involves receiving information off the coordinator’s website, communicating between the end recipient and the original shipper, assuring that the shipping platforms are in acceptable condition, negotiating a price to *resell* (an element lacking in a closed loop “members only” or leasing systems) the shipping platforms that were released into commerce by the original shipper back (note: never tracked; ownership of the pallets goes with the transfer of ownership of the products of the shipper), expediting the repurchase by the original shipper and, if necessary, providing shipping assistance for the return of these shipping platforms to the original shipper.

Meehan et al. disclose a system of buying and selling goods and services over the internet, one of the goods being shipping platforms. However, the items are subject to bidding by multiple parties much like the plethora of on-line auction sites, such as e-Bay. There is no way for the bidders to be directed to Applicants’ coordinator’s web site unless they have the site address found only on the identifier provided by the coordinator to the original shipper and applied to the original shippers’ own shipping platforms. Meehan et al. are not concerned with the repurchase of lost or untracked shipping pallets by their original shipper.

The combination of Sapphire and Meehan et al. fail to disclose a system whereby the end recipient initiates contact with the coordinator by viewing the stencil on a specific shipping platform, making contact with the coordinator via the coordinator established website, then working with the coordinator to resell the specific shipping platforms and return them to the original independent shipper. It is respectfully submitted that the combination of Sapphire and Meehan et al. teach away from the system created by Applicants’.

With regard to the Examiner’s pointing to the prior amendment to claim 1 where the word “may” was introduced, thus leaving uncertainty in the claim, Applicants have deleted this

term and replaced it with the more certain term “asks”, since this is in fact how the claimed method is practiced (support for which may be found on page. 3, line 27).

In view of the foregoing amendments made to the claims and the discussion of the cited art, Applicants respectfully request the reconsideration and withdrawal of this rejection.

Claims 2-3, 12-13 and 15-18 are rejected under 35 USC 103(a) as being unpatentable over Sapphire, in view of Meehan et al. and in further view of CHEP.

Sapphire and Meehan et al. have already been discussed above. It is worth underscoring, however, a few critical items of distinction. The important feature of Meehan et al. is that it is a web-based auction site for a variety of items. It is not a system whereby an original shipper is able to choose whether or not to repurchase any of its original shipping platforms with the assistance of a coordinator whose sole responsibility is the reunification of a specific product, the platform, with the original shipper of that platform. Within the Meehan et al. system, anyone can bid on and then buy any item, regardless of the item(s)’ point of origin. The coordinator’s website is accessible by the end recipient, but once contact has been made, no third party can interfere between the coordinator, the end recipient and the original shipper. Communication now only travels between the end recipient/coordinator and the original shipper/coordinator.

CHEP is a web-based shipping container transfer network. CHEP retains ownership of the shipping platforms. Ownership of each of the shipping platforms in this system is never transferred during the entire process of shipping product from the original shipper through receipt by an end recipient and final shipment back to the member original shippers. The platforms are tracked and accounted for at all times within the closed loop CHEP network.

In contrast, Applicants’ system reconnects shipping platforms that would otherwise be lost or otherwise disposed of. This is not a closed loop system such as disclosed by CHEP or the third party auction based system of Meehan et al. Any attempt to combine the closed loop systems of CHEP.com and Sapphire with the third party auction system of Meehan et al. would provide a confusing system. Applicants’ have solved a problem not addressed by any of the references either alone or in combination, namely the identification and repurchase by the

original shipper of un-tracked shipping platforms, the location of which is unknown until the end recipient contacts the coordinator to start the process of the claimed subject matter.

The subject matters of claims 2 and 3 have now been incorporated into claim 1, in order to clarify the function of the coordinator, its link to the identifier and the use of a computer system to assist with the relocation and possible re-unification of an original shipper's pallets with that specific original shipper. In view of this amendment, Applicants respectfully request the reconsideration and withdrawal of this rejection.

Claims 7-9 are rejected under 35 USC 103(a) as being unpatentable over Sapphire in view of Meehan et al. and further in view of the web site identified hereinafter as Canadian Patent Council (CPC). CPC, like CHEP, consists of member companies. Although this argument has been previously presented, it is worth underscoring a few points of distinction. CPC always owns the pallets. As members remove and replace pallets within a "pool", CPC accounts for each members' balance. CPC is an inventory control manager. The combination of the closed network system of CPC and Sapphire with the third party auctioning system of Meehan et al. would create a system that would enable third parties to bid on and purchase shipping platforms that are already owned by another company or the "network" manager. A pallet recovery system resulting from the suggested combination is not only completely nonfunctional, but clearly does not suggest Applicants' system of providing a means to locate lost pallets and then provide the end recipient of a pallet in his/her possession a mechanism by which a specific pallet can be repurchased by its original shipper through the system created by Applicants' coordinator. The concept of placing repair standards onto a website is not the invention. It is merely a dependent aspect of Applicants' system. Applicants respectfully request that with the reconsideration and withdrawal of the rejection of these dependent claims in view of the amendments made hereinabove to independent claim 1.

Applicants claim a system of identifying untracked pallets and then coordinating the repurchase by and return of a few or all of the pallets held by the end recipient to the original shipper at the sole discretion of the original shipper. Whether or not the pallets are repurchased by the original shipper is at the discretion of the original shipper and is an element not addressed by any of the cited references. Within the closed loop systems disclosed by the references cited

by the Examiner, an essentially “automated” cycle is established in that there is a degree of certainty within these systems that the pallets will be returned to their original owner or re-inventoried, as within the CPC system. This “certainty” is lacking from Applicants’ claimed system. Applicants are claiming a system that is concerned with the identification of otherwise lost or discarded pallets, the coordination of communication between the end recipient and the original shipper and further action, such as managing the repurchase of the pallets, the transfer of money, and the coordination of the return of the repurchased pallets.

### **Conclusion**

Applicant believes the claims, as amended, are patentable over the prior art, and that this case is now in condition for allowance of all claims therein. Such action is thus respectfully requested. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' attorney would advance the prosecution of the case to finality, she is invited to telephone the undersigned at the number given below.

"Recognizing that Internet communications are not secured, I hereby authorize the PTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file."

Respectfully Submitted:  
--Richards et al.--

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